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April 30, 2004

VIA HAND DELIVERY

Deborah Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

Re: Petition of Chattanooga Gas Company for Approval of Adjustment
of its Rates and Charges and Revised Tariff
Docket No. 04-00034

Dear Chairman Tate:

Enclosed you will find the original and thirteen copies of Chattanooga Gas Company's Responses to Consumer Advocate and Protection Division's Motion for Leave to Serve Additional Data Requests.

Please feel free to contact me if need additional information.

Sincerely,



D. Billye Sanders
Attorney for Chattanooga Gas Company

DBS/hmd
Enclosures

cc: Archie Hickerson
Steve Lindsey
John Ebert, Esq.
Elizabeth Wade, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

April 30, 2004

IN RE: PETITION OF CHATTANOOGA)	Docket No 04-00034
GAS COMPANY FOR APPROVAL OF)	
ADJUTMENT OF ITS RATES AND)	
CHARGES AND REVISED TARIFF)	

**RESPONSE OF CHATTANOOGA GAS COMPANY TO THE CONSUMER
ADVOCATE AND PROTECTION DIVISION'S MOTION FOR LEAVE TO SERVE
ADDITIONAL DATA REQUESTS**

1. In its Motion For Leave To Serve Additional Discovery Requests, the Consumer Advocate and Protection Division (CAPD) cites two reasons why it should be allowed to serve additional discovery: (1) Rule 1220-1-2-.11(5) should not apply to "major rate cases" and (2) Chattanooga Gas Company's ("CGC's") alleged failure to respond to the Minimum Filing Guidelines ("Guidelines") in a timely manner. Both of these arguments fail to establish "good cause for the service of additional interrogatories or requests for production"¹ for the reasons set forth below. Therefore, CGC respectfully requests that the CAPD's motion be denied.
2. The CAPD has not complied with TRA Rule 1220-1-2-.11(5) with respect to the requirements for a motion to seek permission to serve more than forty (40) discovery requests. TRA Rule 1220-1-2-.11(5) states that any such motion shall set forth the *additional requests* and be accompanied by a memorandum establishing good cause. The CAPD attached to its motion the same discovery requests that it served on CGC on April 23, which purport to contain 36 questions. The document actually has 115 questions including subparts. Discovery Request 11 is question number 40. It is unclear from the motion or the attachment if the CAPD is seeking

¹ Rule 1220-1-2- 11(5)(a)
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permission to ask Discovery Request 11 through Discovery Request 36 or whether it is seeking to ask questions that it has not yet filed. In any event, the CAPD cannot establish good cause because it is unclear which questions that the CAPD is seeking permission to ask. The CAPD's memorandum gives no reasons for why it needs to ask particular questions or why the data supplied or to be supplied by the company in response to its first 40 questions and the questions that have already been asked by the TRA Staff will not provide sufficient information for its analysis. The CAPD seeks an exception to Rule 1220-1-2-.11(5) and contends:

In all major rate cases, the questions from the Consumer Advocate have exceeded 40 in number. This is because a major rate case requires and (sic) analysis of the cost and capital structure, investment, and rate design of a large public utility as well as its affiliates, a task that could hardly be accomplished with 40 questions alone.²

Yet as stated above, the CAPD has not been specific as to why the information already available in the docket or to be obtained from outstanding discovery requests is not sufficient to analyze these issues.

2. The CAPD points out that in both the Tennessee American and Nashville Gas rate cases, it blatantly ignored Rule 1220-1-2-.11 (5) and issued well in excess of the limit of 40 requests, including subparts. No motion to exceed the limit could be located in the record of either proceeding. The mere fact that more than 40 questions were asked in another docket, in which no objection was raised, is not sufficient to establish good cause in this docket.

4 In its motion the CAPD has mischaracterized the Minimum Filing Guidelines and has implied a requirement where no such requirement exists. The nature of the Guidelines as optional and entirely voluntary is clearly presented within the preamble of the Guidelines that

² CAPD's Motion for Leave to Serve Additional Discovery Requests page 2, paragraph 4

was drafted by the CAPD Staff, the TRA Staff, and representatives of the three gas utilities that participated in the project. The Guidelines begin with the following sentence:

To avoid duplication of requested information, assure more orderly and timely investigations, and provide better support for rate filings, the Tennessee Regulatory Authority (“TRA”) offers a natural gas distributor filing an application for a rate increase **the option** of providing supporting information with its application (emphasis added).

Although the CAPD’s representatives, who met with the TRA Staff and representatives of the gas companies in drafting the Guidelines and the preamble agreed that the Guidelines were being offered to the gas distribution companies *as a option*, the CAPD now attempts to twist the Guidelines into a requirement, and contends that CGC has chosen “not to follow the Guidelines in a timely manner.” However, the CAPD failed to explain how CGC’s voluntary provision of data could be considered untimely when the Company was under no obligation to file the data.

5. The voluntary nature of the Guidelines is further enhanced by the following statements included in the Guidelines themselves:

These requests are intended to initiate, and should be regarded as part of, the data request process. The provision of information in response to these requests at the time of filing an application for a rate increase **is entirely optional** (emphasis added).

and

The failure to **file any specific information shall not be** grounds for non-acceptance of the application or for an extension of the time intervals set forth in Tenn. Code Ann. §65-5-203 (emphasis added).

6. Not only are these guidelines optional, contrary to the arguments of the CAPD, CGC did file the majority of the items identified in the Guidelines well in advance of the CAPD’s filing to intervene in this docket (Several of the items identified in the Guidelines are proprietary and confidential and will be provided subject to the protective order.) In fact, CGC provided these

items to the CAPD prior to its intervention in the case. Moreover, CGC has already responded to seventy-one data requests issued by the TRA Staff and has provided these responses to the CAPD.

7. It appears that the CAPD may be attempting to abuse the discovery process by issuing excessive data requests. Rather than issue a request that complied with Rule 1220-1-2-.11, the CAPD initially issued a request on April 23, 2004 that included in excess of 150 subparts, some of which are identical to requests to which the CAPD itself objected to as being overly broad and unduly burdensome in the Tennessee American Water Company (“TAWC”) case in TRA Docket 03-00118. An example is Discovery Item 15 (attached as Exhibit A). This is virtually the same discovery request issued by TAWC to which the CAPD stated:

The Consumer Advocate objects to this interrogatory on the grounds that this request is overly broad and burdensome. The interrogatory goes well beyond the discovery permitted pursuant to Tenn. R. Civ. P. § 26.02(4)(A)(i). Further, discovery has just begun and is ongoing at present in this matter. Investigation by the Consumer Advocate is continuing and since the Consumer Advocate has not yet received initial responses to its discovery request a great deal rests on the responses provided to its discovery request by TAWC. At this time, it is not possible to address this interrogatory. Moreover, the basis for experts opinions will be set forth in prefiled testimony. The Consumer Advocate has not identified an expert to testify in this matter. Once the Consumer Advocate identifies an expert to testify in this matter, the procedure described in Tenn. R. Civ. P. § 26.02(4).

Although the CAPD contended that this discovery request was overly broad and burdensome when it was asked to respond, it issued the same request to CGC.

8. Similarly, in response to the Tennessee American Water Company’s request #3: “Produce copies of any and all documents referred to or relied upon in responding to the Attorney General’s discovery requests,” the CAPD responded:

It is not the duty or obligation of the Consumer Advocate to provide all documents referred to or relied upon in responding to TAWC's discovery request. Nevertheless, the Consumer Advocate will provide proper references on a limited basis where possible. It would be duplicative for the Consumer to provide copies of any and all documents relied and referenced to in answering TAWC's discovery requests.

Again, while the CAPD objects to providing such data, it issued the same request to CGC as Discovery Item 7 of the discovery issued April 23, 2004 to CGC.

9. In this proceeding the CAPD has attacked CGC for not "timely" complying with voluntary Guidelines that have never been subject to the rulemaking process or any official review by the TRA, while advocating ignoring a rule adopted by the TRA, and approved by the Tennessee Attorney General. Neither of these arguments establish "good cause" for issuing additional discovery requests. In fact, CGC has already responded to the majority of the Guidelines and seventy-one data requests from the TRA Staff. Indeed, these voluntary guidelines were jointly developed by the CAPD, the TRA Staff and the gas companies in order to cut down on the amount of additional discovery that would be needed in a rate case. The preamble to the guidelines states that "This information is commonly sought by the TRA and the Consumer Advocate and Protection Division ("CAPD"), in data requests after the filing of the application." (emphasis added). There are 86 questions, (not including subparts) in the guidelines. The CAPD has not offered one reason why forty additional data requests, along with this information, and the information requested by other intervenors would not allow it to obtain the information it needs to prepare its case.

10. Rule 1220-1-2-.11 was designed to prevent parties from abusing the discovery process. CGC simply asks that the CAPD be required to review the information previously provided in this case and narrow its requests to comply with Rule 1220-1-2- 11.

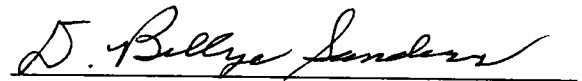
11. Finally, in its discovery requests, its motion and cover letter accompanying the motion, the CAPD refers to CGC as “a Division of Piedmont Natural Gas Company, Inc.” As previously noted in its responses to the Guidelines and the TRA Staff’s discovery requests, CGC is a subsidiary of AGL Resources, Inc.

WHEREFORE, CGC respectfully requests that the CAPD’s motion be denied.

Respectfully submitted,

CHATANOOGA GAS COMPANY

By:



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CERTIFICATE OF SERVICE

I, hereby certify that on this 30th day of April 2004, a true and correct copy of the foregoing document was delivered by hand delivery or U.S. mail postage prepaid to the other Counsel of Record listed below.

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